

**Incompetent to Stand Trial Solutions Working Group Tuesday,  
August 31, 2021 – 3:00 PM to 5:00 PM  
Discussion Highlights**

**1. Opening Remarks and DSH Updates**

Stephanie Clendenin, workgroup Chair and Director for the Department of State Hospitals (DSH), opened the Zoom meeting. She reviewed which members were in attendance. Alternate Cory Salzillo attended as an alternate for Sheriff Barnes. Alternate Kim Pederson attended as an alternate for Pamila Lew. Stephanie Clendenin introduced Veronica Kelley, Director of Behavioral Health for San Bernardino County and President of the County Behavioral Health Directors Association, who was absent at the first meeting. All other members of the workgroup were in attendance.

Stephanie Clendenin addressed questions received about group rules, emphasizing that the statute calls for the group to propose actionable solutions, not to function as an oversight body. She reminded the group that the state has set aside \$75 million for this fiscal year for implementing their suggestions, and up to \$175 million in future years. She briefly reviewed the process for the meeting and emphasized that the group is governed by the Bagley-Keene Open Meeting Act, which applies to their public meetings as well as the work of the group outside the meetings. She acknowledged that the Zoom chat last meeting was not necessarily viewable to the public and, therefore, going forward, meetings will not use chat for questions and communication among workgroup members. Questions and comments will now be taken by calling on raised hands. The text from the chat during the 8/17/21 workgroup kick off meeting was included in the minutes, which are posted on the IST Working Group website.

Stephanie Clendenin described the Alameda County lawsuit about the IST population. She outlined that:

- In 2019, the Alameda Superior Court ordered the department to commence substantive services to IST commitments within 28 days of the commitment (measured by the date of service of the commitment packet).
- DSH appealed this order, but it was upheld. DSH then appealed to the California Supreme Court, which as of last week denied to hear the appeal, making the ruling final.
- The court clarified that treatment (services and medication) must exceed the level required in county jails by Penal Code 6030 and 15 CCR 1200, which is not considered substantive.

- DSH had 30 months from the 2019 ruling date to achieve the 28-day service timeline. It is unknown at this time if the court will make an adjustment to this timeline factoring in COVID or other factors.

Stephanie Clendenin showed a graph of IST waitlist numbers of referrals and admissions from January 2019 to the present. The graph showed increases in the number of IST referrals on waitlists in correlation with the onset and waves of the pandemic and influenced by spikes in referral numbers.

She provided more information on the timelines for short-term, medium-term, and long-term goals and how they connect to broader behavioral health goals:

- Short-term (April 1, 2022) should provide access to treatment to the 1600+ currently in jail awaiting treatment as well as new referrals and should reduce the number of new referrals and identify those restored.
- Medium-term (January 10, 2023) should continue to provide timely treatment and increase IST treatment alternatives.
- Long-term (January 10, 2024 or 2025) should work to break cycles of criminalization, reduce number of felony ISTs while broader behavioral health transformations are implemented (CalAIM, Behavioral Health Care Continuum, and Community Care Expansion programs).

Stephanie Clendenin outlined additional objectives, such as reducing recidivism and length of stay. She discussed statutory triggers for the workgroup (Welfare and Institutions Code Section 4147). These state that if the Secretary of CHHS believes that the workgroup cannot complete the development of the recommendations or they are not being implemented in a reasonable amount of time due to factors outside the California Health and Human Services or Department of State Hospital's control and the IST referrals continue to exceed capacity and a waitlist continues, then, with approval and notice, DSH may cease admitting new Lanterman Petris Short (LPS) patients, impose reduction targets, and charge 150% of the daily bed rate for LPS usage.

Questions from workgroup members:

- Jonathan Raven (Yolo County Chief Deputy District Attorney) asked if the court gave a definition of what constitutes commencement of restorative treatment. Christine Ciccotti, Chief Counsel for DSH, answered that the order does not specify and leaves the discretion to them with the requirement that they are "reasonably designed to promote restoration."
- Veronica Kelley (Director of Behavioral Health for San Bernardino County and President of the County Behavioral Health Directors Association) asked about the timeline on the short-term goal of providing treatment to IST referrals currently in jail. Stephanie Clendenin answered that there is not a strict timeline on what must happen on that date; rather, it is a framework for how they want to be rolling out services.
- Josh Gauger (Legislative Representative, Administration of Justice, California Association of Counties) asked if a chart representing average number of days ISTs spend on waitlist

has been produced. Stephanie Clendenin replied that there is no such chart, but at times of peak waitlist length, the number was over 200 days from commitment date. Josh Gauger asked about the projected impacts of the solutions for which there is funding, to which Stephanie replied that it very difficult to project as there are many factors out of their control.

## **2. Presentation: Los Angeles Office of Diversion and Reentry (ODR)**

Based on a request during the August 21, 2021 Workgroup, staff from the LA Office of Diversion and Reentry (ODR) were invited to do a presentation on their community-based restoration program for the felony IST (FIST) population. Kristen Ochoa (ODR Medical Director) provided an introduction and overview of the program in terms of the daily work flow of picking people up from jail and connecting them to services (see PowerPoint presentation for detail). Kristen Ochoa introduced the rest of her team: Gregory Pleasants (Director of Felony IST Program), Oona Appel (Clinical and Forensic Psychologist), and Dana Valdez (Clinical and Forensic Psychiatrist).

Presentation highlights:

- ODR was created in 2015 to serve incarcerated people and people involved in the justice system with mental disorders and substance use disorders, particularly people without housing.
- To date, ODR has diverted 6,664 people from jail into community services.
- ODR provides a housing program, a misdemeanor IST program, a FIST program, a maternal health program, and a DSH diversion program.
- LA County has 1,100 FISTs per year.
- ODR currently has funding for 415 beds.
- ODR uses PC 1370(a)(1)(G) to “off-ramp” now competent persons.
- Gregory Pleasants emphasized the importance of seeing all people they work with as people first who often have a lack of housing and mental health care. Important to look at systemic factors rather than falling into personal blame and to remember that people need continued support and multiple chances in recovery.
- ODR staff invest time into relationship building with clients beginning pre-release, which improves the chances of client success. A non-punitive approach with clients.
- Dana Valdez explained that ODR clinicians review all IST cases to determine which individuals have particularly challenging mental health symptoms and require a referral to a psychiatrist for additional evaluation and care.

- Medication is encouraged, but never forced.
- Rapport is built before treatment plans are suggested.
- Psychiatrists and clinicians communicate regularly with each other and with post-release providers after a referral is made.
- Oona Appel described ODR's core belief as "we can safely house defendants with SMI charged with violent felonies."
- ODR provides support through clinical oversight to community providers.
- 95% of FIST clients are housed in open residential settings with extensive staff present, similar to the staff makeup of a state hospital.
- ODR is currently serving 402 FIST clients and 704 clients have been released since their program launch in 2018.
- Oona Appel presented data showing a 17% re-arrest rate for FISTs compared to a nearly 50% re-arrest rate for those not in the program.
- Kristen Ochoa indicated that they believe this program could be implemented effectively throughout the state.

#### Questions from workgroup members:

- Kim Pederson (alternate for Pamila Lew) asked about the trajectories for restored clients vs. clients unable to be restored. Oona Appel responded that restored patients have all continued in other types of diversions and none have been incarcerated. Kristen Ochoa said those that cannot be restored are sometimes returned to family and sometimes placed in the Department of Mental Health or in ODR housing.
- Veronica Kelley asked about the timeline of program building, where their funding comes from, and how their residential houses are licensed. Kristen Ochoa said ODR started in 2015, but the FIST program started in 2018, before which they were building relationships with housing providers. Their housing sites are not licensed, but are classified as interim housing sites, so they are quick to get off the ground. They use DSH funding and do not bill MediCal for the FIST program.
- Brenda Grealish observed how key engagement with clients is and asked about what documentation ODR has on best practices, particularly around avoiding involuntary medication. Kristen Ochoa discussed their occasional use of utilize involuntary medication orders or courts for persuasion. Oona Appel referred Brenda to their paper, "De-carceration in Action."

- Josh Gauger asked how they would split up goals into short, medium, and long-term. Kristen Ochoa responded that this is difficult because services are most effective when offered all at once. She believes an inpatient facility is not necessary when investing in residential programs, but a path to deal with crises is crucial.

### **3. DSH Data Presentation: Regional/County Felony IST Data**

Stephanie Clendenin introduced the next presentation, which is an augmentation of the statewide data presented at the August 17, 2021 Workgroup Meeting. Presenters included: Chris Edens (Deputy Director of Forensic Services Division) and Janna Blanco-Lowder (Chief of Research, Evaluation, and Data)

Presentation highlights:

- Chris Edens shared a map of California counties that shows percentage changes of the number of FIST referrals received monthly. There is wide variation in the rate of change, from none to nearly 20% (Los Angeles County).
- They also analyzed recidivism rates in a discharged cohort over three years and found that around 50% of that cohort was arrested and convicted within three years of release.
- Chris Edens emphasized that while reactive solutions (e.g., jail-based treatment, building more beds) can help, what is really needed are strategies to reduce the total number of referrals.
- Chris Edens presented a map showing consistently high increases across regions.
- Chris Edens presented a map of the 15 counties with the highest referral rates, which are primarily in the Bay Area and Southern California.
- Chris Edens showed the rate of homelessness in FIST referrals at time of arrest, noting that most counties have rates over 50%, with a statewide average over 60%.
- Most referrals receive an involuntary medication order, but these are not guaranteed to be enforced.
- More data are available on the IST Workgroup website.

Questions from workgroup members:

- Cory Salzillo (alternate for Sheriff Barnes) asked if the presence of the JBCT program is connected to referral increases. Chris Edens said there may be a correlation, but the data are not available. Cory asked if there is a training for criminal justice stakeholders, particularly courts, on the propriety of declaring doubt if the goal is to reduce the overall

number of referrals. Kate Warburton responded that she is not aware of any such training, but the more important factor is accurate assessments. She also noted that they have not seen an increase in inappropriate referrals of competent people, rather an increase in people with psychotic disorders being arrested.

- Jonathan Raven asked Cory Salzillo to find out how many sheriffs are actually implementing involuntary medication orders. Cory Salzillo responded that the question has gone out, but he needs to do more information collection.
- Stephanie Welch asked why the referral increase rates are lower in Bay Area Counties. Chris Edens and Kate Warburton say they have not investigated that.

## **5. Working Group Introductions**

Stephanie Clendenin noted that the formation and implementation of working groups will be essential in structuring the process for identifying short-, medium-, and long-term solutions. Karen Linkins described the three working groups/sub groups that will meet in between main monthly meetings:

1. Early Access to Treatment and Stabilization for Individuals Found IST on Felony Charges
2. Diversion and Community-Based Restoration for Felony ISTs
3. Initial County Competency Evaluations

Group 1:

- Kate Warburton discussed that the first group will identify short-term solutions to provide prompt stabilization services to FIST referrals in jail, increasing the number who have already returned to competence when reevaluated and the number who qualify for diversion. Kate Warburton and Melanie Scott will co-chair this group. They compiled a list of positions and organizations they want to see represented in the group (see meeting PowerPoint).

Group 2:

- Stephanie Welch described the second group, which will aim to identify strategies to implement diversion and community-based programs. Stephanie Welch and Chris Edens will co-chair this group. They compiled a list of positions and organizations they want to see represented in the group (see meeting PowerPoint), pointing out the importance of including families and consumers. Chris Edens indicated that the group will dive into looking at regional variations and effective examples of strategies.

Group 3:

Kate Warburton described the third working group, which will aim to reduce the number of IST referrals by examining the current state of initial county competency evaluations. Kate Warburton and Charles Scott will co-chair this group, and also have compiled a list of desired positions and organizations they want represented in the group (see meeting PowerPoint).

Stephanie Clendenin asked to briefly hear questions and feedback from group members on the three working groups:

- Jim Kooler said more people will need to be brought into the group to fill all of these roles.
- Kim Pederson asked if all of the general group's final suggestions are expected to fall into the category of the three working groups. Stephanie Clendenin replied that this is their starting place, but are open to other suggestions and can consider adding additional workgroups based on those.
- John Keene said that input from probation departments would be useful in the diversion group and seconded that more people will need to be brought in to fill these group roles.
- Veronica Kelley asked for prevention efforts to be included in the goals of the first group. She also requested that behavioral health be included in the third group and for that group to look at standardization of assessments.

#### **4. Public Comment: 15 mins**

Stephanie Clendenin invited public comment. She reminded everyone that they can raise their hand to speak or email their comment.

Karen Linkins called on Mark Gale, who said he has been going to ODR meetings since their inception and it should be considered a north star and replicated statewide. He believes JBCTs were a mistake and thinks people do not really know what they look like. He asked for a presentation by JBCTs similar to the ODR presentation to increase understanding. He said if volunteers can join workgroups he would like to.

Douglas Dunn of Contra Costa County Mental Health Commission asked to be a part of work group number two on community solutions, as he sees these as severely lacking in his county.

#### **5. Meeting Wrap Up and Next Steps**

The next all group meeting will be September 29th. Work groups will begin mid-September and all members receive follow up regarding working group membership. These working groups will meet through October and the meetings are open to the public and subject to Bagley-Keene.

### **Appendix 1: Chat Transcript**

Jonathan Raven to Hosts and panelists: I may have missed this, but you told us what the court said was NOT the commencement of restorative treatment/services (i.e., jail

treatment). Did the court give direction on the definition of the commencement of restorative treatment/services?

Chris Edens to Hosts and panelists: We pay ODR \$165/day or just over \$60k annually per residential bed.

Brenda Grealish to Hosts and panelists: Is it possible for us to get a copy of this paper that addresses engagement?

Kate Warburton to Hosts and panelists: I will post the pdf

Brenda Grealish to Hosts and panelists: Thank you!

Karen Linkins to Everyone: Stephanie and Kim — please e-mail your questions to the group and we'll make sure you get answers from the LA team. Thank you!

Kim Pederson to Hosts and panelists: Karen, is the best way to do that by responding to the calendar slip email, or do you have another suggestion for what would work best?

Karen Linkins to Everyone: Please send them to: [ISTSolutionsWorkgroup@dsh.ca.gov](mailto:ISTSolutionsWorkgroup@dsh.ca.gov)

John Freeman to Everyone: For these sessions, we are using the Zoom Q&A function to address technical issues only. Because this is a public meeting of the work group, community comments can be provided during public comment or to [ISTSolutionsWorkgroup@dsh.ca.gov](mailto:ISTSolutionsWorkgroup@dsh.ca.gov)

Douglas Dunn to Everyone: I have a brief comment and can e-mail the questions.